

APPENDIX X DETERMINATION OF A-E LIABILITY DAMAGES

1. General. Detailed and accurate cost records are very important when seeking recovery of A-E liability damages. Damage computations must show the source of the data and be signed and dated by the preparer. Government labor costs must be determined in accordance with normal accounting practices. The computation of damages should be amended as required. Damages will be categorized as construction costs, ancillary costs, and investigation and recovery costs, as discussed below.

2. Construction Costs.

a. Identifiable costs in a construction change (usually executed by a contract modification, but may be a new contract, supplemental agreement, purchase order or other type instrument) that would not have been included in the construction contract price had the design been correct. Such costs include: tearout and demolition, scrap material, restocking charges, premium for expedited delivery, reinstallation, difference in new and salvage value of unused or removed material or equipment, delay and impact, and extended overhead.

b. Do not include construction costs that are "value added," that is, items or work that should have been included in the design but were omitted or improper due to the A-E firm's error or omission. The Government is entitled to only the extra costs associated with including such omitted or improper items or work in the construction and not the actual construction costs of the items or work themselves, unless it can be shown that the costs are more than they would have been had the items or work been included in the original construction specification.

3. Ancillary Costs. Include costs such as:

a. Construction S&A costs associated with the additional construction costs, in the usual percentage of construction costs.

b. Administrative costs to prepare and award a purchase order or contract if necessary for the remedial construction.

c. In-house costs for the corrective design.

d. Cost of re-procurement of A-E services, including the associated administrative costs.

e. Diminished Value. In some instances it is impracticable to remedy an A-E firm's error or deficiency. If so, the damage is the difference in value of the facility as it exists and what its value would have been had the error or deficiency not occurred.

4. Investigation and Recovery Costs. Technical and administrative costs to investigate, document, and review liability, and recover the damages, including actions by the AERC, technical specialists, and expert witnesses.